

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MARIEL SUMNER,

Plaintiff,

v.

SACRED HEART MEDICAL CENTER,
non-profit Washington public
benefit corp.,

Defendant.

NO. CV-04-0285-EFS

**ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT,
DENYING AS MOOT PLAINTIFF'S
MOTIONS, ENTERING JUDGMENT,
AND CLOSING FILE**

A hearing was held in the above-captioned case on September 28, 2005. The Defendant was represented by Michael Love, and Plaintiffs were represented by Patrick Kirby and Nicholas Kovarik. Before the Court were Defendant's Motion for Summary Judgment, (Ct. Rec. 16), Plaintiff's Motion for Summary Judgment Re: Ms. Sumner's ADA Disability, (Ct. Rec. 29), Plaintiff's Motion to Strike, (Ct. Rec. 33), and Plaintiff's Motion to Exclude the Expert Testimony of Dr. Joseph Moisan, (Ct. Rec. 34). After reviewing the submitted materials, oral argument, and relevant case and statutory law, the Court was fully informed. This Order serves to supplement and memorialize the Court's oral ruling granting the Defendant's Motion for Summary Judgment and denying as moot Plaintiff's motions.

1 **A. Joint Undisputed Facts¹**

2 Plaintiff Mariel Sumner was formerly employed as an Assistant Nurse
3 Manager on the 7 North unit at Sacred Heart Medical Center ("SHMC") in
4 Spokane, Washington. Ms. Sumner took and was given a medical leave of
5 absence from her duties at SHMC from July 7, 2003, through September 16,
6 2003, due to a hysterectomy.

7 On September 16, 2003, Ms. Sumner met with Virigina "Pinkie" Hutton
8 at SHMC, after returning from her medical leave of absence with a note
9 from her doctor releasing her to work with a 30-pound lifting
10 restriction. The 30-pound lifting restriction is permanent. The
11 Assistant Nurse Manager Description lists a physical requirement of
12 occasionally lifting up to 50 pounds. Ms. Hutton informed Ms. Sumner,
13 because of her lifting restriction, she was not qualified to work as an
14 Assistant Nurse Manager. Ms. Hutton directed Ms. Sumner to Bob Hebner,
15 SHMC's Nurse Recruiter, to inquire as to whether SHMC had any other
16 openings that Ms. Sumner was qualified for. Ms. Sumner met with Mr.
17 Hebner on September 16, 2003.

18 SHMC posted openings for a Neonatal ICU Registered Nurse on April
19 6, 2004, and September 24, 2004, and for a Nurse Case Manager on January
20 5, 2004, March 25, 2004, August 31, 2004, and February 11, 2005. Ms.
21 Sumner did not contact SHMC about or apply for any of the above openings.
22 SHMC has not contacted Ms. Sumner about a position or offered her any
23 nursing or non-nursing jobs at SHMC since September 16, 2003.

25 ¹ The parties submitted a Joint Statement of Uncontroverted Facts
26 on August 8, 2005, (Ct. Rec. 57).

1 Ms. Sumner does not currently have a mental or physical impairment
2 that substantially limits a major life activity. Ms. Sumner has been
3 working as an infusion nurse at Rockwood Clinic since October of 2003.
4 She has not sought treatment for any physical or mental symptoms since
5 September 16, 2003.

6 Ms. Sumner's Charge of Discrimination against SHMC was received by
7 the Washington State Human Rights Commission ("WSHRC") on June 16, 2004.
8 The Equal Employment Opportunity Commission ("EEOC") received the signed
9 charge from WSHRC on July 7, 2004. Ms. Sumner filed this lawsuit on
10 August 9, 2004, (Ct. Rec. 1), alleging that based upon her 30-pound
11 lifting restriction, SHMC believed she was disabled in the major life
12 activity of working and, as a result, believed she was incapable of
13 performing any tasks in the nursing field and failed to offer alternative
14 work.

15 **B. Summary Judgment Standard**

16 A party is entitled to summary judgment where the documentary
17 evidence produced by the parties permits only one conclusion. *Anderson*
18 *v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986). The party seeking
19 summary judgment must show that there is an absence of disputed issues
20 of material fact and that he is entitled to judgment as a matter of law.
21 FED. R. CIV. PROC. 56(c). In other words, the moving party has the burden
22 of showing that no reasonable trier of fact could find other than for the
23 moving party. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). "A
24 material issue of fact is one that affects the outcome of the litigation
25 and requires a trial to resolve the parties' differing versions of the
26 truth." *S.E.C. v. Seaboard Corp.*, 677 F.2d 1301, 1306 (9th Cir. 1982).

1 The court is to view the facts and draw inferences in the manner most
2 favorable to the non-moving party. *Anderson*, 477 U.S. at 255; *Chaffin*
3 *v. United States*, 176 F.3d 1208, 1213 (9th Cir. 1999).

4 A burden is also on the party opposing summary judgment to provide
5 sufficient evidence supporting his claims to establish a genuine issue
6 of material fact for trial. *Anderson*, 477 U.S. at 252; *Chaffin*, 186 F.3d
7 at 1213. "[A] mere 'scintilla' of evidence will be insufficient to
8 defeat a properly supported motion for summary judgment; instead, the
9 non[-]moving party must introduce some 'significant probative evidence
10 tending to support the complaint.'" *Fazio v. City & County of San*
11 *Francisco*, 125 F.3d 1328, 1331 (9th Cir. 1997) (quoting *Anderson*, 477
12 U.S. at 249, 252).

13 **C. Failure to Exhaust Administrative Remedies**

14 SHMC seeks to dismiss Ms. Sumner's claim for failing to exhaust her
15 administrative remedies by timely filing her discrimination claim with
16 the EEOC. Ms. Sumner argues an extended federal filing period is
17 applicable to her situation, submitting the filing period was extended
18 from 180 days to 300 days. The Court finds Ms. Sumner failed to timely
19 file her claim because the applicable filing period was 180 days given
20 that Washington's Human Rights Commission does not have jurisdiction over
21 SHMC.

22 The Americans With Disabilities Act ("ADA"), 42 U.S.C. § 12101-
23 12203, contains the identical requirements for filing an administrative
24 charge of discrimination with the EEOC as the Civil Rights Act of 1964
25 ("Title VII"), as amended, 42 U.S.C. § 2000e. 42 U.S.C. § 2000e-5;
26 *Bonilla v. Muebles J.J. Alvarez, Inc.*, 194 F.3d 275, 277 (1st Cir. 1999).

1 Accordingly, for a federal court to have subject matter jurisdiction over
2 ADA claims, the plaintiff must have exhausted all administrative
3 remedies. *Bonilla*, 194 F.3d at 277; *Vasquez v. City of Los Angeles*, 349
4 F.3d 634, 644 (9th Cir. 2003). A plaintiff exhausts her administrative
5 remedies by timely filing her charge with the EEOC or the appropriate
6 state agency. 42 U.S.C. § 2000e-5(b). The general rule is a plaintiff
7 must file a charge with the EEOC within 180 days. *Id.* § 12117(a).
8 However, federal law states the time period for filing may be extended
9 from 180 days to 300 days in jurisdictions that have a state agency with
10 subject matter jurisdiction over the charge. *Id.*; 29 C.F.R. §
11 1601.13(a)(4)(ii)(A). The statute specifically states:

12 A charge under this section shall be filed *within one hundred*
13 *and eighty days* after the alleged unlawful employment practice
14 occurred and notice of the charge (including the date, place
15 and circumstances of the alleged unlawful employment practice)
16 shall be served upon the person against whom such charge is
17 made within ten days thereafter, *except* that in a case of an
18 unlawful employment practice with respect to which the person
19 aggrieved has initially instituted proceedings with a State or
20 local agency with authority to grant or seek relief from such
21 practice or to institute criminal proceedings with respect
22 thereto upon receiving notice thereof, such charge shall be
23 filed by or on behalf of the person aggrieved *within three*
24 *hundred days* after the alleged unlawful employment practice
25 occurred, or within thirty days after receiving notice that the
26 State or local agency has terminated the proceedings under the
State or local law, whichever is earlier, and a copy of such
charge shall be filed by the Commission with the State or local
agency.

42 U.S.C. § 12117(a) (emphasis added).

Plaintiff argues, citing to the Washington Workshare Agreement and
EEOC v. Commercial Office Products Co., 486 U.S. 107 (1988), because
Washington has such an agency, her claim is timely. Plaintiff is correct
that in Washington charges for employment discrimination may be reviewed

1 by the WSHRC. R.C.W. § 49.60.010; (Ct. Rec. 44-3: WorkShare
 2 Agreement). However, the parties do not dispute that WSHRC does not have
 3 jurisdiction over SHMC, a non-profit religious organization.² R.C.W. §
 4 49.60.040(3). Accordingly, WSHRC does not have jurisdiction over claims
 5 involving SHMC. Therefore, this extended filing period is not applicable
 6 to Plaintiff's claim. Rather, 29 C.F.R. § 1601.13(a)(2) is applicable:

7 A jurisdiction having a FEP agency without subject matter
 8 jurisdiction over a charge (e.g., an agency which does not
 9 cover sex discrimination or does not cover nonprofit
 10 organizations) is equivalent to a jurisdiction having no FEP
 11 agency. Charges over which a FEP agency has no subject matter
 12 jurisdiction are filed with the Commission upon receipt and are
 13 timely filed if received by the Commission within 180 days from
 14 the date of the alleged violation.

15 29 C.F.R. § 1601.13(a)(2).

16 Plaintiff contends this rule does not apply, pointing to the
 17 following Workshare Agreement provisions:

18 In order to facilitate the assertion of employment rights, the
 19 EEEEC and the [WSHRC] each designate the other as its agent for
 20 the purpose of receiving and drafting charges . . .
 21 . . .

22 ² R.C.W. § 49.60.040(3) defines "employer" as including: "any
 23 person acting in the interest of any employer, directly or indirectly,
 24 who employs eight or more persons, and does not include any religious or
 25 sectarian organization not organized for private profit." SHMC provided
 26 an affidavit from Roger Chase, its Vice President/General Counsel and
 Assistant Secretary for Providence Health Care d/b/a SHMC, who states
 that SHMC is a separate Washington nonprofit corporation exempt from
 federal income taxes under § 501(c)(3) of the Internal Revenue Code. (Ct.
 Rec. 50-1 at 1 & 2.)

1 The [WSHRC] shall take all charges alleging a violation of .
2 . . the ADA where both [the WSHRC] and EEOC have mutual
3 jurisdiction, or where EEOC only has jurisdiction as long as
4 the allegations meet the minimum requirements of those Acts,
5 and for charges specified in Section III.A.1. below, or where
6 EEOC only has jurisdiction refer them to the EEOC for initial
7 processing.

8 (Ct. Rec. 44-4 at 8 & 9: Kirby Aff., Exhibit A at 28 & 29.) The Court
9 does not agree with Plaintiff's position that the Workshare Agreement
10 provides the WSHRC with jurisdiction to hear Plaintiff's claims, as these
11 cited provisions merely allow the WSHRC to act as an agent for the EEOC.
12 In fact, the Workshare Agreement specifically states, "[t]his delegation
13 of authority to receive charges does not include the right of one Agency
14 to determine the jurisdiction of the other Agency over a charge," as well
15 as "the EEOC will initially process the following charges: . . . [a]ll
16 disability-based charges which may not be resolved by the FEPA in a
17 manner consistent with the ADA." (Ct. Rec. 44-4 at 9 & 10.) Accordingly,
18 the Workshare Agreement recognizes there are disability-based claims
19 which the WSHRC cannot resolve. For these reasons, although the
20 Workshare Agreement allows the WSHRC to operate as an agent of the EEOC,
21 it does not provide jurisdiction over charges against a non-profit
22 religious organization. Given that SHMC is a private religious
23 organization, the WSHRC did not have authority over Plaintiff's claims.
24 It could accept service on behalf of the EEOC, but because the WSHRC did
25 not have authority over Ms. Sumner's claims, the 180-day filing
26 requirement applied. Accordingly, her claims are untimely and this Court
27 does not have jurisdiction.

1 The Court finds this holding consistent with *EEOC v Commercial*
2 *Office Products Co.*, 486 U.S. 107, 113 (1988). In *Commercial Office*
3 *Products Co.*, the agency had jurisdiction over the claim and, therefore,
4 the extended federal filing period applied. *Id.* at 123. However, in
5 this case, the WSHRC did not have jurisdiction over Ms. Sumner's claim
6 and, as a result, the 180-day-time limit applies. It is important to
7 note *Commercial Office Products Co.* does state the 300-day-filing period
8 is merely an exception to the rule:

9 As a general rule, a complainant must file a discrimination
10 charge with the EEOC within 180 days of the occurrence of the
11 alleged unlawful employment practice. If a complainant
12 initially institutes proceedings with a state or local agency
with authority to grant or seek relief from the practice
charged, the time limit for filing with the EEOC is extended
to 300 days.

13 *Id.* at 110 (citations omitted) (emphasis added).

14 Accordingly, the analysis in *Commercial Office Products Co.* does not
15 alter the Court's finding that the 300-day federal filing period is not
16 applicable to Ms. Sumner's claim given that SHMC is excluded from the
17 WSHRC's jurisdiction. As a result, Ms. Sumner's administrative claim is
18 untimely. Ms. Sumner's employment with SHMC was terminated on September
19 16, 2003. She filed her complaint with WSHRC on June 16, 2004, which was
20 274 days after the alleged violation. (Ct. Rec. 19-7 at 2.) The EEOC
21 received Ms. Sumner's signed EEOC Affidavit and charge from the WSHRC on
22 July 7, 2004, which was 295 days following Ms. Sumner's employment
23 termination. Because she failed to file her charge with either the WSHRC
24 or the EEOC until more than 180 days after the violation, she failed to

1 exhaust her administrative remedies and, as a result, the Defendant's
2 motion for summary judgment is granted.³

3 **D. Remaining Issues**

4 Because the Court does not have jurisdiction, it cannot address the
5 merits of Plaintiff's Americans with Disabilities Act claim.
6 Furthermore, the Court is unable to exercise supplemental jurisdiction
7 over Plaintiff's state law claims. See 28 U.S.C. § 1367(a); *Kelly v.*
8 *Fleetwood Enters., Inc.*, 377 F.3d 1034, 1040 (9th Cir. 2004). Therefore,
9 the Court denies as moot Plaintiff's motions.

10 For the above stated reasons, **IT IS HEREBY ORDERED:**

11 1. Defendant's Motion for Summary Judgment, **(Ct. Rec. 16)**, is
12 **GRANTED. Judgment is to be entered in Defendant's favor.**

13 2. Plaintiff's Motion for Summary Judgment Re: Ms. Sumner's ADA
14 Disability, **(Ct. Rec. 29)**, Plaintiff's Motion to Strike, **(Ct. Rec. 33)**,
15 and Plaintiff's Motion to Exclude the Expert Testimony of Dr. Joseph
16 Moisan, **(Ct. Rec. 34)**, are **DENIED AS MOOT.**

17
18 ³ Although the application of the 180-day timeline appears strict
19 and unfair, the Supreme Court stated in *Mohasco Corp.*, 447 U.S. at 835,
20 that:

21 [t]he unfairness argument is based on the assumption that a lay
22 person reading the statute would assume that he had 300 days
23 in which to file his first complaint with either a state or
24 federal agency. We find no merit in this argument. We believe
25 that a lay person would be more apt to regard the general
26 obligation of filing within 180 days as the standard diligence
he must satisfy, and that one who carefully read the entire
section would understand it to mean exactly what it says.

Id. at 825.

IT IS SO ORDERED. The District Court Executive is directed to

(A) Enter this Order; and

(B) Prepare and enter **JUDGMENT** in favor of Defendant; and

(C) Provide copies of the Order and Judgment to the parties; and

(D) **CLOSE THIS FILE.**

DATED this 30th day of September, 2005.

s/Edward F. Shea
EDWARD F. SHEA
United States District Judge

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